

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII**

**PUBLIC UTILITIES
COMMISSION**

2008 OCT 28 P 3:50

FILED

In the Matter of the Application of

HAWAIIAN ELECTRIC COMPANY, INC.

**For Approval of Rate Increases and Revised
Rate Schedules and Rules**

DOCKET NO. 2008-0083

**MEMORANDUM IN OPPOSITION TO
HAWAII COMMERCIAL ENERGY CUSTOMER GROUP'S MOTION
FOR LEAVE TO FILE REPLY TO HAWAIIAN ELECTRIC COMPANY,
INC.'S MEMORANDUM IN OPPOSITION TO THE MOTION TO
INTERVENE AND BECOME A PARTY OF HAWAII COMMERCIAL
ENERGY CUSTOMER GROUP FILED OCTOBER 7, 2008**

AND

CERTIFICATE OF SERVICE

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ENERGY CUSTOMER GROUP FILED OCTOBER 7, 2008**

HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") respectfully submits this Memorandum in Opposition to the Hawaii Commercial Energy Customer Group's ("Commercial Group") Motion for Leave to File Reply to Hawaiian Electric Company, Inc.'s Memorandum in Opposition to the Motion to Intervene and Become a Party of Hawaii Commercial Energy Customer Group Filed October 7, 2008 ("Motion"), filed October 21, 2008.¹

This memorandum in opposition is submitted pursuant to HAR §6-61-41 which permits

¹ The Motion was hand-delivered to HECO's counsel of record, Goodsill Anderson Quinn & Stifel on October 21, 2008. Hawaii Administrative Rules ("HAR") § 6-61-41(c) states: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion . . ." HAR § 6-61-22 states: ". . . When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation . . ." Five days from October 21, 2008, excluding Saturdays, Sundays and holidays, is Tuesday, October 28, 2008. Therefore, this Memorandum in Opposition to the Motion is timely filed.

the filing of an opposition to a motion.²

The relief requested in the Motion, that the Commercial Group be permitted to “submit supplemental information” by responding to HECO’s Memorandum in Opposition, should not be granted. The Commercial Group’s attempt to present “supplemental information”, in effect, is a “fourth bite at the apple”.³ These additional bites at the apple do not result in the “just, speedy and inexpensive determination” of this proceeding which is the purpose of the Commission’s Rules of Practice and Procedure as stated in HAR §6-61-1. This “trial and error” approach to filing motions to intervene presents a moving target in which the resources of the Commission and HECO end up not being used efficiently.

The Motion does not even explain why the “supplemental information” was not previously presented in the Commercial Group’s Motion to Intervene. The Motion also does not explain why it took 14 days to respond to HECO’s Memorandum in Opposition.⁴


² The Motion cites and quotes HAR §6-61-140 as support for the Commercial Group’s request to file a reply to HECO’s Memorandum in Opposition to the Motion to Intervene and Become a Party of Hawaii Commercial Energy Group (“HECO’s Memorandum in Opposition”) filed October 7, 2008. Motion at 1 (“Pursuant to HAR §6-61-140, [t]he commission may allow replies to a motion for rehearing or reconsideration . . . if it deems those replies desirable or necessary.”) The Commercial Group’s reliance on HAR §6-61-140 is misplaced and erroneous. The Commercial Group’s Motion is seeking to file a reply to a memorandum in opposition to a motion to intervene, and not to a motion for rehearing or reconsideration. HAR §6-61-140 is part of Subchapter 14 of the Commission’s Rules of Practice and Procedures, which deals with motions for reconsideration and rehearing.

³ The first bite was the Motion to Intervene and Become a Party by Wal-Mart Stores, Inc. (“Wal-Mart”) and Sam’s West, Inc. (“Sam’s”) filed August 20, 2008, which was subsequently withdrawn and replaced with the second bite - - the second Motion to Intervene and Become a Party by Wal-Mart and Sam’s filed September 2, 2008. The third bite was the Motion to Intervene and Become a Party of the Commercial Group (“Commercial Group’s Motion to Intervene”) filed September 29, 2008. As stated in the Commercial Group’s Motion to Intervene, Wal-Mart and Sam’s are members of the Commercial Group.

⁴ The Commercial Group’s Motion to Intervene did not specify that the group was intending to use an “expert witness”. See Commercial Group’s Motion to Intervene at 6. With respect to the “expert witness”, the Motion contends that the witness will testify on “cost-of-service” and “rate design” issues. Motion at 1-2.

Based on the foregoing, HECO respectfully requests that the Commercial Group's Motion be denied.

DATED: Honolulu, Hawaii, October 28, 2008.



Kevin Katsura

Attorney for
HAWAIIAN ELECTRIC COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing MEMORANDUM IN OPPOSITION TO THE HAWAII COMMERCIAL ENERGY CUSTOMER GROUP'S MOTION FOR LEAVE TO FILE REPLY TO HAWAIIAN ELECTRIC COMPANY, INC.'S MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE AND BECOME A PARTY OF HAWAII COMMERCIAL ENERGY CUSTOMER GROUP FILED OCTOBER 7, 2008, together with this Certificate of Service, by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

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DATED: Honolulu, Hawaii, October 28, 2008.

A handwritten signature in black ink, appearing to read "Kevin Katsura", is written over a horizontal line.

Kevin Katsura

Attorney for:
HAWAIIAN ELECTRIC COMPANY, INC.

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